

FILED

March 17, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A19-1586

In the Matter of the Civil Commitment
of: Wayne Carl Nicolaison.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Wayne Carl Nicolaison for
appointment of counsel be, and the same is, denied.

IT IS FURTHER ORDERED that the petition of Wayne Carl Nicolaison for further
review be, and the same is, denied.

Dated: March 17, 2020

BY THE COURT:



Lorie S. Gildea
Chief Justice

Nicolaison Appendix A

STATE OF MINNESOTA

IN COURT OF APPEALS

A19-1586

FILED

January 14, 2020

**OFFICE OF
APPELLATE COURTS**

In the Matter of the Civil Commitment of:
Wayne Carl Nicolaison.

ORDER OPINION

Commitment Appeal Panel
File No. AP18-9133

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and Reilly, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Wayne Nicolaison was indeterminately civilly committed as a psychopathic personality in 1992. He has been diagnosed with paraphilic disorder (in a controlled environment) and personality disorder with antisocial and narcissistic traits. He has extensively challenged his commitment in state and federal court but has never participated in treatment.

2. In October 2017, Nicolaison petitioned for a transfer out of a secure facility, provisional discharge, or discharge. He declined to be interviewed for a treatment report or a sexual violence risk assessment. After a hearing, the special review board recommended denying Nicolaison's petition. Nicolaison asked the commitment appeal panel (CAP) for rehearing and reconsideration, seeking only discharge. He testified in

Nicolaison Appendix B

support of his petition, acknowledging that he is a “criminal sex offender” but denying any basis for his civil commitment. And he offered extensive documentary evidence, almost all of it relating to his initial commitment and his legal challenges to it. At the close of Nicolaison’s case, the CAP concluded he failed to make a prima facie showing on the criteria for discharge and dismissed Nicolaison’s petition.

3. A person committed as a psychopathic personality may petition for a discharge from commitment. Minn. Stat. § 253D.27, subds. 1(b), 2 (2018). The petitioner bears the burden of presenting “competent evidence to show that [he] is entitled to the requested relief.” Minn. Stat. § 253D.28, subd. 2(d) (2018). To satisfy this burden of production, the petitioner must present evidence that he (1) “is capable of making an acceptable adjustment to open society,” (2) “is no longer dangerous to the public,” and (3) “is no longer in need of treatment and supervision.” Minn. Stat. § 253D.31 (2018); *see Coker v. Jesson*, 831 N.W.2d 483, 486-87 (Minn. 2013). The CAP “shall not” grant discharge unless “specific conditions” exist “to provide a reasonable degree of protection to the public and to assist the committed person in adjusting to the community.” Minn. Stat. § 253D.31.

4. Upon a motion to dismiss for failure to establish a prima facie case for discharge, the CAP views the evidence in the light most favorable to the committed person. *In re Commitment of Poole*, 921 N.W.2d 62, 66-67 (Minn. App. 2018), *review denied* (Minn. Jan. 15, 2019). But the petitioner must present more than his own conclusory assertions that he is entitled to discharge. *Id.* at 68-69. On appeal, we review de novo whether the petitioner established a prima facie case. *Id.* at 67.

5. Nicolaison argues that the CAP erred by denying his discharge petition. But instead of identifying any record evidence that tends to show he satisfies the three criteria for discharge, he argues that no current evidence indicates he meets the criteria for commitment and therefore it is unconstitutional not to discharge him. This argument is misplaced. The standard for determining whether a person should be committed is different from the standard for determining whether the commitment should continue or the person should be discharged. *Call v. Gomez*, 535 N.W.2d 312, 319 (Minn. 1995). Confinement may continue for as long as it bears a “reasonable relation to the original reason for the commitment; that is, the person continues to need treatment for his sexual disorder and continues to pose a danger to the public.” *Id.* That “reasonable relation” standard, which is echoed in the discharge statute, ensures the constitutionality of the ongoing commitment. *Id.* at 318.

6. Nicolaison failed to establish a prima facie case that he is entitled to discharge under the statutory standard approved in *Call*. First, he presented no evidence tending to show that he no longer needs treatment. Rather, he presented only his own testimony that he does not believe his personality disorder is susceptible of treatment and he has not participated in treatment. *See id.* (noting rejection of argument that a psychopathic personality condition is untreatable). Second, Nicolaison presented no evidence tending to show that he is no longer dangerous. To the contrary, the record uniformly indicates that he meets the criteria for commitment and, having refused to address his condition through treatment, continues to pose a danger to the public. And third, Nicolaison does not dispute that he failed to present any evidence that he is capable


of making an acceptable adjustment to open society. Because Nicolaison did not present any evidence that he satisfies the constitutionally permissible requirements of the discharge statute, the CAP did not err by dismissing his discharge petition.

IT IS HEREBY ORDERED:

1. The CAP's order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(b), this order opinion will not be published and shall not be cited as precedent except as law of the case, res judicata, or collateral estoppel.

Dated: 1/14/20

BY THE COURT



Judge Louise Dovre Bjorkman